

**Abdul Khalid Vs. State**

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**Court :** Delhi

**Decided On :** May-24-1993

**Reported in :** 1993(26)DRJ437

**Judge :** Sat Pal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 819 of 1993

**Appellant :** Abdul Khalid

**Respondent :** State

**Advocate for Pet/Ap. :** S.A. Siddiqui and; R.K. Bahri, Advs

**Judgement :**

**Sat Pal, J.**

(1) This is a petition for grant of bail under Section 439 of the Code of Criminal Procedure.

(2) Mr. Siddiqui, the learned counsel appearing on behalf of the petitioner submitted that in the present case procedural safeguards have not been strictly followed. He pointed out that all the 20 purias allegedly containing smack were mixed up and thereafter sample was drawn from the alleged smack. He,

therefore, contended that it may be that some purias did not contain smack at all while other purias may be containing less than 250 mlgms. smack. The learned counsel further submitted that no public witness was associated prior to arrest of the petitioner and the Explanation for not associating the public witness is unsatisfactory. He also submitted that there is violation of Section 52A of the Narcotic Drugs and Psychotropic Substances Act (in short the Act) in as much as no inventory was prepared in this case. He then submitted that there is violation of Section 50 of the Act also as the option to be searched before a Gazetted Officer/Magistrate was not given to the petitioner. The learned counsel further submitted that there is a violation of Section 57 also as the requisite report was not sent to the immediate superior official. In support of his contentions, the learned counsel placed reliance on a judgment of Karnataka High Court reported in the case of A.V. Dhanna singh VS. 77ie State of Karnataka, 1993 Cri .L.J. 94.

(3) Lastly the learned counsel submitted that the petitioner has been in jail since 9th March, 1990 i.e. for the last more than three years and he is having a young wife and four minor children and in the absence of the petitioner the arrangements for the proper education of the children is not being made. He, therefore, contended that in the alternative the petitioner should be released on interim bail for some period to make necessary arrangements for the proper education of the children.

(4) Mr. Bahri, the learned counsel appearing on behalf of the State, however, submitted that notice under Section 50 was duly served on the petitioner and this fact has been mentioned in the FIR. He further submitted that the Explanation as to why public witness could not be associated has also been given in the FIR. Learned counsel further submitted that there is no violation of Section 52A as a Seizure Memo containing the particulars of purias was prepared in this case and further there is no violation of Section 57 also as the report was sent to the superior officer. He, therefore, contended that the petitioner was not entitled to bail.

(5) I have given my thoughtful consideration to the submissions made by the learned counsel for the partics. Keeping in view of totality of the circumstances

and in view of Section 37 of the Act, I am of the view that the petitioner is not entitled to regular bail. However, keeping in view the fact that the petitioner has been in jail for the last more than three years and to enable the petitioner to make the necessary arrangements for the education of his children, I direct that the petitioner be released on interim bail for a period of three months from the date of release on furnishing a bail bond in the sum of Rs.20,000.00 with one surety in the like amount to the satisfaction of the learned trial Judge. With this order petition stands disposed of.

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